



Attachment # 4
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August 11, 2005

Ms. Karen Harrell
Leon County Risk Manager
301 South Monroe Street
Tallahassee, FL 32301

Certified Mail

RECEIVED
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LEON COUNTY
ATTORNEY'S OFFICE

Re: PGIT Member: Leon County BOCC
Claimant: Rudy Maloy
Claim No.: 84369

Dear Ms. Harrell:

This will acknowledge receipt of Mr. Thiele's correspondence dated July 29, 2005, regarding the above-referenced matter, wherein he requested a determination of coverage from Preferred Governmental Insurance Trust (PGIT), for the claims asserted by County Commissioner Rudy Maloy. Specifically, Mr. Maloy, through his counsel Mark Herron, Esquire, has sought reimbursement of attorney's fees and costs incurred by him in connection with his response to a complaint filed by Eugene Danaher with the Florida Elections Commission.

We take this opportunity to notify you that the Coverage Agreement issued by Preferred Governmental Insurance Trust (PGIT), to Leon County, Florida does not provide coverage for the claims which have been asserted in that claim. Accordingly, PGIT must respectfully deny coverage to Leon County under that Agreement, and inform you that PGIT will be unable to defend or indemnify the County under said Agreement, for any claims which are asserted in said claim or any judgment or verdict which may result from said claim.

We refer you to the following provisions of the Agreement:

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

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1. Coverage Agreement.

- a. We will pay those sums that the covered party becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this coverage agreement applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in LIMITS OF COVERAGE (SECTION III); and
 - (1) Our right and duty to defend end when we have used up the applicable limit of coverage in the payment of judgments or settlements under Coverages A or B

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS-COVERAGES A AND B.

- b. This coverage applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or property damage" is caused by an "occurrence" that takes place in the "coverage territory;" and
 - (2) The "bodily injury" or "property damage" occurs during the agreement period...

2. Exclusions.

This insurance does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the covered party...

**COVERAGE B. PERSONAL AND ADVERTISING INJURY
LIABILITY**

1. Coverage Agreement.

- a. We will pay those sums that the covered party becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" or offence and settle any claim or "suit" that may result. But:
- (1) The amount we will pay for damages is limited as described in LIMITS OF COVERAGE (SECTION III); and
 - (2) Our right and duty to defend end when we have used up the applicable limit of coverage in the payment of judgments or settlements under Coverage A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS-COVERAGES A AND B.

- b. This coverage agreement applies to:
- (1) "Personal injury" caused by and offense arising out of your business, excluding advertising, publishing,, broadcasting or telecasting done by or for you; . . .
 - (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services; but only if the offense was committed in the "coverage territory" during the agreement period.

SECTION V-DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following offenses:
 - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - b. Oral or written publication of material that violates a person's right of privacy;
 - c. Misappropriation of advertising ideas or style of doing business; or
 - d. Infringement of copyright, title or slogan.

3 "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

10 "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

11 "Personal injury" means injury, other than "bodily injury," arising out of one or more of the following offenses:

- a False arrest, detention or imprisonment;
- b Malicious prosecution;
- c The wrongful eviction from, wrongful entry into, or invasion of the right to private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

14 "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.

15 "Suit" means a civil proceeding in which damages because of "bodily injury," "personal injury" or "advertising injury" to which this coverage agreement applies are alleged.

PGIT ENDORSEMENT

This endorsement modifies coverage provided under the following:

- G. arising out of or caused or contributed to by any actual or alleged illegal discrimination."

(PL FORM)

PUBLIC ENTITY PROFESSIONAL LIABILITY

**PUBLIC OFFICIALS LIABILITY AND EMPLOYMENT
PRACTICES LIABILITY**

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Coverage Agreement**, the **Covered Parties** and the **Insurer** agree as follows:

I COVERAGE AGREEMENTS

A Political Officials' Liability

The Company will pay on behalf of the **Covered Party** all sums in excess of the Deductible that the **Covered Party** shall become legally obligated to pay as **Damages** and **Claim Expenses** because of a **Claim** first made against the **Covered Party** and reported to the Company during the **Agreement Period** or, if exercised, the **Extended Reporting Period**, by reason of a **Wrongful Act** in the performance of or failure to perform duties for the **Public Entity**. The **Wrongful Act** must have been committed on or subsequent to the **Retroactive Date** specified in the Declarations and before the end of the **Agreement Period**.

II DEFINITIONS

When used in this **Coverage Agreement**:

D. Claim means a civil proceeding against any **Covered Party** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading and alleging a **Wrongful Act**. **Claim** shall also mean an administrative proceeding against any **Covered Party** alleging a **Wrongful Act**. **Claim** shall not include a labor or grievance proceeding pursuant to a collective bargaining agreement.

E. Damages means compensatory damages which the **Covered Party** becomes legally obligated to pay on account of a covered **Wrongful Act**, by way of judgment, award or, with the prior written consent of the Insurer, settlement.

G Covered Party means:

- 1 the Public Entity,
- 2 all persons who were, now are or shall be lawfully elected or appointed officials or employees while acting for or on behalf of the Public Entity,
- 3 commissions, boards, or other units, and members and employees thereof, operated by and under the jurisdiction of such Public Entity . . .

H Insurer means the Preferred Governmental Insurance Trust.

N Public Entity means the municipality, governmental body, department or unit which is named in the Declarations.

S Wrongful Act means, with respect to Insuring Agreement A, Political Officials' Liability, any actual or alleged act, error or omission, neglect or breach of duty committed by the **Public Entity**, or by any other **Covered Party** solely in the performance of duties for the **Public Entity**.

T Wrongful Employment Practice means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment related misrepresentation;
3. violation of any federal ,state, or local laws (whether common or statutory) concerning employment or discrimination in employment;
4. sexual harassment or other unlawful work place harassment;
5. wrongful deprivation of a career opportunity or failure to employ, promote or grant tenure;
6. wrongful discipline of employees;
7. negligent evaluation of employees;
8. failure to adopt adequate workplace or employment

9. policies and procedures; or
employment related libel, slander, defamation or
invasion of privacy.

III EXCLUSIONS

The **Insurer** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A based upon, arising out or attributable to any actual dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by an Insured.
- L brought or maintained by or on behalf of or in the right of any **Covered Party**, however, with respects any **Claim** alleging any **Wrongful Employment Practice**, this exclusion shall only apply to cross-claims or counter-claims brought or maintained by, on behalf of, or in the right or one **Covered Party** against another **Insured**."

The basis for our denial of coverage is as follows:

1. This claim does not seek an award of damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" as those terms are defined in the GL Form and accordingly there is no coverage under that Agreement. Additionally, there has been no "occurrence", as that term is defined. For the reasons set forth above, there is no coverage under the GL Form issued by PGIT to Leon County for the claims which have been asserted by Mr. Maloy.
2. There is no coverage for the claims asserted by Mr. Maloy under the PL Form issued by PGIT to Leon County. Commissioner Maloy does not assert a "wrongful act" on the part of Leon County as that term is defined in the Agreement. Further, Commissioner Maloy is a "Covered Party" as that term is defined in the PL Form, and Exclusion L specifically excludes coverage for claims "brought or maintained by, or on behalf of or in the right of any Covered Party, . . .". For the reasons set forth above, the claims asserted by Mr. Maloy are not covered under the PL Form issued by PGIT to Leon County.

In light of the above, we must respectfully deny coverage to Leon County, for this claim for reimbursement of Mr. Maloy's attorney's fees and costs, under the Coverage Agreement issued by PGIT. Should you have any questions regarding this correspondence please do not hesitate to contact the undersigned. Additionally, should there be any further information which you believe might implicate coverage under the Coverage Agreement, please bring those to my attention immediately so that we can make a timely coverage determination.

Sincerely,

Yarixa Benitez
Liability Specialist

cc/Herbert W.A. Thiele, Esquire, County Attorney